

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
3

4 UNITED STATES OF AMERICA,)
5) CR23-179-RAJ
6 Plaintiff,) SEATTLE, WASHINGTON
7)
8 v.) April 30, 2024
9)
10 CHANGPENG ZHAO,) 9:30 a.m.
11)
12 Defendant.) Sentencing Hearing
13

14 VERBATIM REPORT OF PROCEEDINGS
15 BEFORE THE HONORABLE RICHARD A. JONES
16 UNITED STATES DISTRICT JUDGE
17

18 APPEARANCES:
19

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1 THE CLERK: We are here for sentencing in the matter
2 of the United States versus Changpeng Zhao, Cause No. 23-179,
3 assigned to this court.

4 If counsel and probation officers could please rise and
5 make your appearances for the record.

6 MR. MOSLEY: Kevin Mosley, for the United States,
7 Your Honor. With me at counsel table are Assistant U.S.
8 Attorneys Michael Dion and Jonas Lerman. And also trial
9 attorney Elizabeth Carr of the Money Laundering and Asset
10 Recovery Section, and Ian Richardson of the Justice
11 Department's National Security Division.

12 THE COURT: Good morning. Who will be speaking on
13 behalf of the government?

14 MR. MOSLEY: I will, Your Honor.

15 THE COURT: Thank you. Please be seated.

16 Counsel.

17 MR. BARTLETT: Good morning, Your Honor, Mark
18 Bartlett on behalf of Mr. Zhao, who's beside me in court.

19 MR. BURCK: Good morning, Your Honor, William Burck
20 for Mr. Zhao.

21 MR. NAFTALIS: Good morning, Your Honor, Benjamin
22 Naftalis for Mr. Zhao.

23 PROBATION OFFICER WHALEY: Good morning, Your Honor,
24 Amelia Whaley, on behalf of U.S. Probation.

25 PROBATION OFFICER ASBURY-BACA: And Officer

1 Asbury-Baca on behalf of probation.

2 THE COURT: Good morning, all of you. Please be
3 seated.

4 Who will be speaking on behalf of the defense?

5 MR. BARTLETT: With the court's permission, I was
6 going to do a short introduction. Mr. Burck will handle most
7 of the argument. There's a legal issue, if it comes up,
8 Mr. Naftalis will handle that. I should also mention that
9 Mr. Zhao also wants to make a statement to the court.

10 THE COURT: That will be acceptable, counsel.

11 I will confirm, counsel, that I've reviewed and considered
12 the following documents:

13 First, the presentence report prepared by United States
14 Probation Officers Amelia Whaley and Sarah Asbury-Baca, and
15 attachments. The government's sentencing memorandum. The
16 defendant's sentencing memorandum with exhibits, and over 160
17 letters of support for the defendant.

18 I've also reviewed the defendant's entire sentencing
19 submission, and the plea agreement. The court will also
20 verify that the court has reviewed all docketed items. The
21 court had confirmed at 5:00 p.m. yesterday, just to verify,
22 that the court had reviewed all docketed items. And I will
23 represent the same thing to all parties.

24 The court notes that there will be an opportunity to make
25 recommendations to this court, but before we do that, the

1 court wishes to engage in whether or not there are any
2 outstanding objections.

3 From the presentence report, I understand there's an
4 outstanding objection as it relates to the application of
5 Guideline Section 2S1.3(b)(1).

6 Counsel for the government, is that still correct?

7 MR. MOSLEY: Yes, Your Honor, that is correct.

8 THE COURT: Counsel for the defense, is that still
9 correct?

10 MR. BARTLETT: Yes, Your Honor.

11 THE COURT: Counsel, before you begin your argument
12 to the court, perhaps it might be advisable for the court to
13 give you its preliminary determination of this issue, and
14 then I'll give you the opportunity to supplement that with
15 argument that you wish to present to the court.

16 First, it's the court's understanding that there's a
17 request for a two-level enhancement under Guideline Section
18 2S1.3(b)(1), whether to impose the enhancement, because the
19 government asserts the defendant knew or believed, at least
20 some of the funds his company processed, were of unlawful
21 activity.

22 The court will note the following: First of all, the
23 government references conscious avoidance. That is a
24 methodology utilized by the Second Circuit, under the
25 *Finkelstein* case. That does not appear to be a test that's

1 been adopted by the Ninth Circuit. It's not the law in the
2 Ninth Circuit.

3 Second, the government represents reasonably foreseeable
4 should be applied. That does not appear to be the standard;
5 rather, deliberate knowledge and a belief appears to be the
6 applicable standard.

7 The record before the court is that the defendant company
8 knew they didn't have effective anti-money-laundering
9 controls in place. However, the plea agreement indicates
10 that Binance processed transactions involving proceeds of
11 illegal activity.

12 The record also indicates, and again, referencing the plea
13 agreement, that Binance caused transactions between the
14 United States persons and persons in jurisdictions that are
15 subject to comprehensive U.S. sanctions.

16 In looking at the entire record submitted by the parties,
17 first of all, there's no evidence that the defendant
18 explicitly was informed of any specific transaction, or a
19 specific user transacted on Binance with criminal proceeds.
20 In reviewing the record, the court also notes that there's no
21 evidence that the defendant was aware of suspicious
22 circumstances, making it reasonable to believe such funds
23 were processed, or proceeds of unlawful activities.

24 The court also considered the defendant was aware of gaps
25 or weaknesses in the company's compliance controls, and

1 existence of users from sanctioned countries, but Binance
2 exchanges still occurred.

3 The court agrees with the defense argument that their
4 issue of generalized knowledge is insufficient. The court
5 believes that it's inappropriate to make application of that
6 request by the government. And the court will not agree and
7 buy into the government's recommendation that that be
8 adopted. For those reasons, the court will deny the request
9 for that application.

10 Counsel for the government, I'll give you a chance to make
11 additional argument, if you wish to, at this time.

12 MR. MOSLEY: One moment, Your Honor. I'm just
13 scaling down, based on what the court just --

14 THE COURT: You can make your record, counsel. And
15 counsel, if it will help you tailor your remarks, I will
16 indicate, first of all, that both sides present reasonable
17 justifications and bases for the arguments that you advanced
18 to this court in your briefing. But both sides failed to
19 articulate a clear standard to be applied by this court. And
20 the court reaffirms that the government carries the burden of
21 proof. But the government has offered nothing more than mere
22 inferences to support their argument, without specific
23 evidence to support the same. And that's the reason for the
24 interpretation made by this court.

25 So, counsel, feel free to consult with co-counsel and then

1 make your argument to the court.

2 MR. MOSLEY: I'm ready, Your Honor.

3 THE COURT: Please proceed, counsel.

4 MR. MOSLEY: Sorry, I don't want to repeat a lot of
5 the factual arguments that we made. I think Your Honor
6 adequately covered those from the bench. But I do want to
7 say a couple of things about what we think the legal standard
8 is here.

9 In Mr. Zhao's papers, they indicate that there should be a
10 heightened mens rea standard, to apply to the application of
11 the enhancement, and they refer to the court in *Rombakh*, they
12 refer to it as the deliberate knowledge enhancement. And
13 then there's some gloss that they add to that enhancement
14 about showing that -- or arguing that it requires knowledge
15 of specific transactions. And we don't believe that that is
16 necessarily the right way to look at that.

17 You know, the court in *Rombakh* never really addressed what
18 deliberate knowledge meant, in relevant part, because the
19 parties had already agreed that the enhancement didn't apply.
20 And to the extent that the court did address that
21 enhancement, it just repeated what the enhancement said,
22 which is that it can be applied if the defendant knew or
23 believed that the funds were proceeds of unlawful activity.

24 Referencing the *Singh* case, I'm not -- that's not
25 particularly enlightening either. You know, in the

1 submission, the defense analogizes the mens rea standard
2 under 2S1.1(b)(1) to 2S1.3(b)(1). I think those enhancements
3 are not quite the same. They are similar, but they are not
4 quite the same. The six-level enhancement applied in
5 money-laundering cases is warranted when the defendant knew
6 or believed the laundered funds were proceeds of and were
7 intended to promote, among other things, an offense involving
8 the manufacture, importation, or distribution of a controlled
9 substance or a listed chemical.

10 Given the requirement that the 2S1.1 enhancement requires
11 knowledge of a particular offense, I think trying to
12 transport that requirement into this requirement is
13 inappropriate, as there is no such requirement in the 2S1.3
14 enhancement.

15 And that court never addressed the threshold mens rea for
16 applying the enhancement. All it said was that the evidence
17 elicited at trial was overwhelming, that the defendant knew
18 the laundered funds were drug proceeds.

19 So while knowledge of specific laundered funds as proceeds
20 of a specific offense was sufficient to apply the enhancement
21 under 2S1.1, that's not the same as finding such proof is
22 necessary for the enhancement to apply, in 2S1.3.

23 The third case relative to the Ninth Circuit, is *Walker*,
24 and that's closer to this case. It addresses the 2S1.3
25 enhancement applied to the case, involving a defendant who

1 caused financial institutions to fail to file CTRs.

2 In that case, the defendant argued that there was no
3 evidence he had knowledge of the underlying criminal
4 activity. But the court applied the enhancement, over that
5 objection, inferring that the defendant did know of the
6 unlawful activity, based on the attempt to conceal the source
7 of funds, and co-conspirator testimony that the defendant had
8 been at the office of the company, and that according to the
9 witness, the defendant knew about the company's illegal
10 activities.

11 Given that inference is in -- at least in that case -- a
12 function or part of how the court came to the conclusion that
13 the 2S1.3 enhancement applied, we argue that supports a
14 similar finding here by this court.

15 I'm not going to go back over the facts, the court has
16 addressed those completely from the bench. But as far as --
17 but we wanted to make a record, at least on the legal
18 analysis, as it relates to the mens rea standard here.

19 One more thing I would add is that our burden of proof is
20 just preponderance of the evidence. And typically, we don't
21 require -- smoking-gun evidence isn't necessarily required
22 under a preponderance standard. And with that, I will sit
23 down.

24 THE COURT: And, counsel, there was one additional
25 objection that was raised with the presentence report. And

1 that specific objection is a request to add to paragraph 29,
2 "Under Zhao's direction, collaborated with law enforcement."
3 Do you take a position on that, counsel? That's the second
4 objection. Actually, it's the first objection by the
5 defense.

6 MR. MOSLEY: Thank you, Your Honor. As to that
7 objection, we agree with probation, that we don't have
8 sufficient information to verify that objection, or verify
9 the veracity of that objection. We do know that Binance has
10 collaborated and cooperated with law enforcement in certain
11 cases. I don't know specifically, standing here right now,
12 that we can verify that particular one.

13 THE COURT: Counsel, before you sit down, the other
14 question I have is, other than that particular objection,
15 were there any other objections that you had to the probation
16 department guideline calculations?

17 MR. MOSLEY: No, Your Honor.

18 THE COURT: That includes the two-level specific
19 offense characteristic enhancement, correct?

20 MR. MOSLEY: Yep, that's correct, Your Honor.

21 THE COURT: All right.

22 Now, with that, counsel, the court's addressed all of the
23 outstanding objections that were raised in the presentence
24 report that would require resolution by this court. Would
25 you agree with that?

1 MR. MOSLEY: I would, Your Honor.

2 THE COURT: Counsel for the defense?

3 MR. BARTLETT: We agree also, Your Honor.

4 THE COURT: There are no other objections that
5 require resolution by the court?

6 MR. BARTLETT: Correct.

7 THE COURT: Do you wish to make a further record,
8 counsel, regarding the objection that was made and the
9 court's ruling on the objection?

10 MR. NAFTALIS: Thank you, Your Honor.

11 THE COURT: Counsel, while you are there, I trust you
12 will also be addressing the other objections I raised with
13 counsel, that was raised by the defense.

14 MR. NAFTALIS: Yes, Your Honor. Why don't I begin
15 with that one. So that's as to paragraph 29.

16 THE COURT: That's correct. Actually, paragraph 30,
17 counsel.

18 MR. NAFTALIS: Paragraph 30.

19 THE COURT: Okay. You would like that added?

20 MR. NAFTALIS: We would like it added. We don't have
21 anything else for the court to consider on it. To the extent
22 the court disagrees with adding it, we're not going to stand
23 on it.

24 THE COURT: All right. The court overrules that
25 objection. The presentence report will remain the same as

1 presented to this court.

2 Now, make your record, counsel, on the balance of the
3 issues.

4 MR. NAFTALIS: As to 2S1.3, we agree with Your
5 Honor's recitation of the lack of factual support or legal
6 support here and probation's thoughtful analysis here. I
7 would only add that given that there's little to no law here,
8 I think the tie goes to the runner. There are no facts of
9 explicit knowledge here, whether you adopt the government's
10 view of how knowledge should be read, as to specific funds or
11 specific transactions, or a lesser view of it.

12 But regardless, since there is no law here, the tie should
13 go to the runner, and the court should not include the
14 enhancement.

15 Thank you, Your Honor.

16 THE COURT: All right. You may be seated.

17 Again, both sides presented credible arguments to support
18 their positions. But the bottom line, the case authority is
19 not clear, there's no clear statement in the Ninth Circuit
20 that supports either of the positions. But the court did
21 make its record, based upon what was available and what was
22 presented.

23 I'd also like to commend probation for the excellent work
24 that you did in the presentence report. It was probably one
25 of the most comprehensive presentence report assessments and

1 analysis this court has considered. And I've been on this
2 bench for many years. So my compliments to you. And I
3 suspect the parties, whether they disagree with your position
4 or not, it was an exhaustive analysis, and that's deeply
5 appreciated. It's not to criticize the parties, but I just
6 want to make sure that there was excellent work done by
7 probation in this case.

8 With that, I'll announce my conclusions as to the
9 appropriate offense level and criminal history category. For
10 these calculations, I'm using the 2023 guidelines manual.

11 The court begins first by identifying that the defendant
12 pled guilty to failure to maintain an effective
13 anti-money-laundering program. The guideline for 31 U.S.C.
14 Section 5318(h) offenses is found in guidelines
15 Section 2S1.3. That section provides that an offense
16 involving failure to maintain an effective
17 anti-money-laundering program, has a base offense level of 8.
18 And the court so finds.

19 The court next addresses the specific offense
20 characteristics. And the court believes that a two-level
21 increase is appropriate, as suggested by probation as well,
22 as the defendant pled guilty to an offense under Subchapter 2
23 of chapter -- strike that, 53 of Title 21, United States
24 Code, for an offense involving more than \$100,000 in a
25 12-month period. That justifies a two-level increase.

1 There are no adjustments for victims. There's an
2 adjustment for defendant's role in the offense. The court
3 finds the defendant was an organizer or leader of a criminal
4 activity that involved five or more participants, or was
5 otherwise extensive. Therefore, the four-level increase is
6 appropriate. And that's pursuant to Guideline
7 Section 3B1.1(a).

8 There's no adjustment for obstruction of justice. The
9 adjusted offense level subtotal is, therefore, 14. There are
10 no Chapter 4 enhancements. The court finds the defendant has
11 clearly demonstrated acceptance of responsibility, and the
12 offense level is therefore decreased by two levels, pursuant
13 to Guideline Section 3E1.1(a). The total offense level is
14 therefore 12.

15 Defendant has a criminal history category of 1. The
16 imprisonment range is 10 to 16 months. Supervised release
17 range is one to three years. Ineligible for probation. And
18 the fine range is \$5,500 to \$55,000.

19 The court will also confirm that the court did not
20 consider the *Jason* factors in its analysis. And the court
21 makes its determination based upon the record and the
22 findings that I will articulate, to support consideration of
23 the guidelines and application of the appropriate sanctions
24 in this case, as recommended by the parties.

25 The court will proceed in the following fashion: First,

1 I'll hear from counsel for the government; then I'll hear
2 from probation; then I'll hear from defense counsel. The
3 defendant will be the last person to address the court.

4 The court is not aware that any other persons need to
5 speak to the court. The court has granted counsel for the
6 defense the permission to separate or segregate your
7 arguments, and that's permissible with the court.

8 So I first wish to confirm with the government, only one
9 individual will be speaking on behalf of the government, and
10 no other supporting statements to the court; is that correct?

11 MR. MOSLEY: That's correct, Your Honor.

12 THE COURT: All right.

13 You may proceed, counsel.

14 MR. MOSLEY: Good morning, again, Your Honor. The
15 court is aware of the relevant facts, they've been described
16 in the statements of fact associated with this case, and the
17 related Binance Holdings Limited matter, and have been argued
18 extensively in both parties' sentencing submissions. I will
19 try not to dwell too much on them now, except to make a few
20 points.

21 I'd like to touch on some themes that drove our sentencing
22 recommendation, and points -- and themes that we believe are
23 relevant to the court's decision today. And then I'd like to
24 take a small moment of time to address some of the salient
25 points presented in Mr. Zhao's sentencing memorandum.

1 We open our submission with the chat between Mr. Zhao and
2 his colleagues, because it encapsulates one of the main
3 factors behind our sentencing recommendation, which is that
4 this was a plan. While admitting that his choices brought us
5 all here today, Mr. Zhao cloaks that admission in language
6 suggesting a mistake. He says, in hindsight, he should have
7 done a better job implementing a compliance program and
8 off-boarding U.S. users.

9 And in mitigation, he points to what he calls an
10 "uncertain regulatory environment." In addition, he asserts
11 that he failed to appreciate the magnitude of having U.S.
12 users on the platform. I think that allays what happened
13 here. This wasn't a mistake. It wasn't a regulatory "oops."
14 And when Mr. Zhao violated the BSA, he was well aware of the
15 legal requirements associated with availing himself of the
16 U.S. financial system.

17 Breaking U.S. law was not incidental to his plan to make
18 as much money as possible; violating the law was integral to
19 that endeavor. And we're not guessing at this. Mr. Zhao
20 said it himself, "Ask for forgiveness, not permission." By
21 not asking for permission, Mr. Zhao made his company great.
22 He made himself a billionaire and a crypto celebrity. And
23 the U.S. financial system, numerous crime victims, and U.S.
24 National Security interests, paid for it.

25 Mr. Zhao was well aware of his U.S. users and the

1 magnitude of their impact on his bottom line. Mr. Zhao
2 tracked Binance's U.S. user base from the very beginning. He
3 tracked how much money he made from his U.S. users, and
4 particularly from the U.S. VIPs. And he tried to do it
5 without getting caught, which was one reason he was
6 deliberately vague about where Binance was based.

7 And in 2019, when he thought he might get caught, he
8 started Binance U.S., and he did begin to off-board some U.S.
9 users. But even that was part of the plan. Instead of
10 coming into compliance with U.S. law, he doubled down and
11 schemed to keep the valuable U.S. VIPs trading on Binance,
12 without U.S. authorities finding out.

13 Again, Mr. Zhao's words are instructive. He did this to
14 achieve a reduction in his losses, and at the same time, to
15 be able to have U.S. supervision agencies not cause him any
16 troubles.

17 He knew when he did it that having U.S. users slowly turn
18 into other users, was wrong, but he did it anyway and tried
19 to hide it.

20 He only began to earnestly bring Binance into compliance,
21 after the government became aware of this investigation and
22 he knew he was caught. And now, after he got caught and
23 admitted his crimes, Mr. Zhao comes before the court asking
24 for, if not forgiveness, per se, certainly for leniency. And
25 while he deserves credit for coming clean and for taking

1 responsibility, that credit is reflected in his plea
2 agreement, notably in the downward adjustment for acceptance
3 of responsibility, and the government's agreement not to
4 bring further criminal charges against him related to conduct
5 described in the statements of fact or information in this
6 case, and in the related Binance case.

7 In part, to keep this plan from succeeding, we ask the
8 court to impose a sentence of 36 months' incarceration. And
9 even if the court is not inclined to oppose that sentence,
10 the brazen nature of this conduct does require a sentence
11 that includes a meaningful period of incarceration.

12 Which brings me to my next theme, which is that a
13 meaningful sentence of incarceration is necessary, to reflect
14 the seriousness of the offense, and provide just punishment
15 for the offense, and promote respect for the law.

16 Mr. Zhao argues the most common outcome for a defendant
17 convicted of a BSA, or similar violation, is time served, or
18 probation. As somebody who's been around long enough to have
19 been around when some of those cases were resolved, I
20 certainly cannot dispute that contention.

21 But Mr. Zhao references other individual defendants who
22 received probation for BSA violations. And he tries to
23 distinguish himself from those who received sentences of
24 incarceration, by focusing on crimes he didn't commit, and on
25 the fact that he is a first-time offender.

1 But focusing on this crime, Mr. Zhao's BSA offense, it is
2 clear that the scale of his crime is orders of magnitude
3 greater than those of other defendants.

4 Taking into -- taking the *Randol* case, for example.
5 Public information indicates that he pleaded guilty to one
6 count of failing to have an effective AML program. He
7 admitted to engaging in three transactions totaling \$273,940
8 in Bitcoin, without obtaining customer identification
9 information. And he admitted that his business allowed
10 illicit actors to launder millions of dollars. His guideline
11 range was in the 6- to 12-month range.

12 In *G&A*, a case I was involved with, the company, its owner
13 and AML manager, pled guilty to BSA violations, that resulted
14 in \$8 million in laundering transactions, G&A paid a fine of
15 \$962,932. And G&A, and its owner, forfeited \$240,733.

16 In *Ali*, the defendant pled guilty to fraudulently
17 obtaining and cashing \$16 million in U.S. Treasury checks.
18 These offenses pale in comparison with Mr. Zhao's offense.
19 Based solely on the statements of fact, his BSA violation led
20 to the movement of hundreds of millions of dollars in illicit
21 funds, and around a billion in transactions, that violated
22 the U.S. sanctions; nearly 900 million of which involved
23 Iran.

24 And that doesn't account for things we didn't catch,
25 because Mr. Zhao and Binance never filed SARs with law

1 enforcement.

2 And as we note in our submission, this is where the
3 guidelines fail us. Based on the sentencing guidelines, one
4 can cause laundering transactions in the thousands, hundreds
5 of thousands, millions, hundreds of millions, or many
6 hundreds of millions. You could make thousands of dollars,
7 hundreds of thousands of dollars, millions of dollars, or in
8 Mr. Zhao's case, billions of dollars, facilitated by unlawful
9 conduct, and have similar very low guidelines.

10 The only reason any of these defendants and Mr. Zhao can
11 be said to be similarly situated, is that the guidelines for
12 this offense are flawed. Sentencing Mr. Zhao to probation,
13 is not treating similar defendants similarly. It is allowing
14 Mr. Zhao to profit unjustly for criminal conduct, on an
15 enormous scale.

16 Such a sentence would not reflect the seriousness of the
17 offense, it would not provide just punishment, and it would
18 not promote respect for the law.

19 If Mr. Zhao does not face incarceration, after
20 deliberately and willfully planning to violate U.S. law, to
21 build the largest cryptocurrency exchange in the world, and
22 get rich in the process, while facilitating the transmission
23 of at least hundreds of millions in illicit funds, and
24 causing hundreds of millions of dollars in sanctions
25 violations, then no one will face incarceration, and the BSA

1 will be, for all intents and purposes, a dead letter.

2 The BSA places financial institutions at the forefront of
3 the protection of our financial system. Financial sanctions
4 imposed under IEEPA are designed to deprive rogue states of
5 the tools they desire, and they play a crucial role in
6 protecting our national security. By not having an effective
7 AML program, Mr. Zhao caused massive damage to both tools, on
8 an order of magnitude far beyond an individual defendant.
9 And his sentence should reflect that.

10 My last theme relates to specific and general deterrence.
11 As we note in our memorandum, the recommended guideline
12 sentence is not -- and as I just said, the recommended
13 guideline sentence is not sufficient to afford adequate
14 deterrence to criminal conduct as to Mr. Zhao, and
15 importantly, to the public at large.

16 But to be clear here, the court should impose the
17 sentence -- a sentence of incarceration here, because of the
18 brazenness and magnitude of Mr. Zhao's conduct, and not just
19 to send a message to the crypto industry, or anybody else.

20 As I noted before, the court should not allow Mr. Zhao to
21 benefit from his plan. But I will point out, briefly, that
22 it is important that any sentence in this case, short of
23 incarceration, would establish some perverse incentives.

24 If you take a step back, an outcome where a defendant
25 makes a plan to violate U.S. law, does so on a massive scale,

1 makes extraordinary amounts of money doing so, gets caught,
2 puts their hands up and says: I'm sorry, and admittedly have
3 to part with a significant amount of money, but then get to
4 go home to continue to make money, a rational actor, like
5 Mr. Zhao appears to be, might look at this and take that
6 chance. The only lesson here is that you'd have to go as
7 large as possible in order to make the chance worth it.

8 And the *BitMEX* case is instructive here. Those defendants
9 got sentenced in 2022, just before Mr. Zhao pled guilty here.
10 In that case, the BitMEX executives similarly planned to
11 avail themselves of the U.S. market, without complying with
12 U.S. law. They got indicted and pled guilty. They made
13 millions of dollars, by breaking the law, and none of them
14 were incarcerated. They, too, decided to ask for
15 forgiveness, not permission, and it largely worked out for
16 them.

17 Following on that, Mr. Zhao and Binance arrived to take
18 that strategy to a whole new level. Lots more money made,
19 and lots more damage to the U.S. financial system and
20 national security interests. Mr. Zhao should be incarcerated
21 because of the severity of his crimes. But a sentence of
22 incarceration would also break the chain of perverse
23 incentives, and provide for specific and general deterrence.

24 Briefly, I'd like to address some of the arguments that
25 Mr. Zhao raises in his -- other arguments he raises in his

1 sentencing memorandum. Again, the sentencing recommendation
2 here is based on Mr. Zhao's offense and related conduct, not
3 on crimes having nothing to do with this case. We are not
4 suggesting that Mr. Zhao is Sam Bankman-Fried, or that he is
5 a monster. And we're not trying to kill the cryptocurrency
6 industry. We're simply seeking a sentence that adequately
7 addresses the magnitude of the offense.

8 As to Mr. Zhao's efforts to build a compliance program,
9 we've covered that pretty much already. He understood what
10 the regulatory environment was, and he knew enough to violate
11 the law. His efforts to block U.S. users happened, because
12 he was afraid of getting caught. And his well-documented
13 attempts to deceive regulators are well known.

14 As to the personal -- Mr. Zhao's personal characteristics.
15 Again, this is not about Mr. Zhao, as a person. For us, it
16 is about his offense conduct and the sentence that it merits.
17 But that said, many otherwise good people have been sentenced
18 to terms of incarceration. And they've been sentenced to
19 incarceration in times where they engaged in momentary lapses
20 in judgment, and not in willful, deliberate conduct like
21 occurred here.

22 As to the international licenses and regulatory costs that
23 Binance has incurred, these were obtained against a backdrop
24 of Binance making significant amounts of revenue in the U.S.,
25 a place that was -- a place where Binance.com did not have a

1 license.

2 And the idea that doing something that you were supposed
3 to do, which is get a license to operate in a country, is a
4 mitigating factor, is something that we would reject.

5 Again, Mr. Zhao and Binance did encourage compliance
6 enhancements. Again, those were done after Binance got
7 caught. And certainly he has complied and cooperated with
8 law enforcement. But, again, this is what you're supposed to
9 do. A company that operates in the United States, avails
10 itself of the U.S. financial system, and makes tremendous
11 amounts of money here, should cooperate with law enforcement.
12 That on occasion, Binance may have gone above and beyond, is
13 commendable, but it does not merit a probationary sentence
14 here.

15 Mr. Zhao did accept responsibility. And it is commendable
16 to him that he chose to come here from a non-extraditable
17 country. He definitely deserves credit for that. But it is
18 worth noting that the alternative was getting charged, and
19 likely having to live life as a fugitive. Or coming to the
20 U.S. to stand trial, and face the significant amount of
21 evidence against him.

22 His stepping down as the CEO was a natural consequence of
23 his wrongful conduct and it's driven, in part, by a desire to
24 protect the company. And that company still exists. He
25 still owns it. And he still stands to continue profiting

1 handsomely from the operations of that company.

2 The financial penalties Mr. Zhao has, and is paying, are
3 significant. But given the magnitude of the wrongdoing here,
4 financial penalties just are not enough. Mr. Zhao should not
5 be allowed to pay his way out of the appropriate punishment
6 here, which is a sentence of incarceration.

7 And even if the court is inclined to take up the
8 government's recommendation on a sentence here, Mr. Zhao is a
9 relatively young person, and will have plenty of time and
10 resource to have the positive impact on society that he
11 desires.

12 As to the citizenship issue, we understand that that is a
13 significant consideration. But we would point out that we
14 are here because of Mr. Zhao's choices. He chose to avail
15 himself of the United States financial system. He chose to
16 make money here. And he chose to break the law here. The
17 fact that he is not a citizen of the United States, should
18 not allow him to incur a windfall from his criminal activity.

19 Mr. Zhao argues that losing control of Binance and
20 sustaining reputational damage, are collateral consequences
21 that merit leniency. They are not. They are merely, again,
22 consequences of committing a criminal offense. Many
23 defendants who face incarceration have failed job loss and
24 reputational damage. That's what happens when you break the
25 law. And in many of those cases, the affected defendants do

1 not have the resources that Mr. Zhao had.

2 Finally, Mr. Zhao argues that a probationary sentence will
3 incentivize others to follow his example, fully accept
4 responsibility, remediate and cooperate. To the contrary, a
5 probationary sentence here, in addition to allowing Mr. Zhao
6 to unjustly profit from his wrongdoing, will incentivize
7 others to break the law, and to do it at the largest scale
8 possible.

9 For all of these reasons, Your Honor, the court should
10 sentence Mr. Zhao to 36 months' incarceration. And, again,
11 if the court is inclined to reject that recommendation, a
12 sentence of incarceration, a meaningful one, is required
13 here, to reflect the seriousness of the offense, to promote
14 respect for the law, and to provide just punishment for the
15 offense, and afford adequate deterrence to criminal conduct.
16 Thank you.

17 THE COURT: Counsel, I have a couple questions; at
18 least one.

19 MR. MOSLEY: Yes, Your Honor.

20 THE COURT: It concerns primarily sentencing
21 disparity. That's one of the guideline factors this court
22 must consider. And I've pored through the cases that have
23 been advanced by both parties. And your recommendation is
24 almost double the top end of the guideline range. And would
25 that not cause sentencing disparity if the court were to

1 follow the government's recommendation, at that level?

2 MR. MOSLEY: Well, we don't believe so, Your Honor,
3 largely because of the magnitude of this offense. An
4 individual defendant has not been responsible for this much
5 movement of illicit funds, that we can think of. And as a
6 result -- and with the accompanying sanctions violations. I
7 note that in Mr. Zhao's submission, a lot of his comparison
8 sets were to corporate cases, not to individual cases, in
9 terms of magnitude of the offense. The fact that an
10 individual was responsible for this is telling here, and is
11 significant.

12 So we don't believe that it would be a sentencing
13 disparity. Certainly the disparity is in the magnitude of
14 the conduct. And if the court -- again, if the court is
15 inclined to not accept our recommendation on this, we still
16 believe a significant sentence of incarceration is necessary.

17 THE COURT: All right.

18 Counsel, of all the cases that you've advanced to this
19 court, is there a particular case that you believe should be
20 the guide or directive for this court to follow, as a basis
21 to conclude this is a fair and just sentence?

22 MR. MOSLEY: I think that this is just -- to some
23 extent, this is a unique case. And so I don't know that
24 there are a ton of cases that I would point to -- I mean, a
25 lot of these other cases, like I said earlier, involve

1 individuals moving small amounts of money here and there.
2 And some of those folks went to jail. In this case, we had
3 someone who deliberately violated U.S. law, moved a lot of
4 money, did so in a way that was designed specifically to
5 avoid being caught by U.S. authorities; and created a new
6 plan, when that plan was about to fail.

7 So I think that this is somewhat of an outlier case, and
8 as such, deserves to be treated that way.

9 THE COURT: And the last question, counsel. As you
10 know, the beginning point under the guideline consideration
11 is history and characteristics. And I've gone through the
12 volume of letters submitted to this court, and they
13 articulate extraordinary commitments and dedication to
14 philanthropic opportunities across the planet, not just in
15 his country, but across the planet.

16 And how did that factor play into the recommendation that
17 you have, that's more than twice the guidelines, which is
18 essentially an exceptional sentence? And was there any
19 weight given to that in your analysis?

20 MR. MOSLEY: There was, Your Honor. We did take into
21 account, and thoroughly reviewed the letters that were
22 submitted on Mr. Zhao's behalf. I think lots of really good
23 people do bad things and violate the law. The sentence that
24 we are asking for, even if Your Honor was to impose it, is
25 significant, as it relates to the BSA, for sure. But is not

1 necessarily as significant -- and I don't want to downplay
2 any jail time; jail time is significant no matter what it is.
3 But if he served that sentence, he would have plenty of
4 resources. Again, he still owns Binance. Binance is still
5 making money. He has a lot of money now. He still would be
6 able to do all of those wonderful things that he plans to do,
7 after serving the sentence.

8 I think what's relevant for us here, is that the sentence
9 needs to reflect the seriousness of the offense, and
10 notwithstanding the good works that Mr. Zhao has been doing,
11 plans to do, or will do in the future.

12 THE COURT: Thank you, counsel. That concludes all
13 the questions I have of you.

14 All right. I'll hear from probation.

15 PROBATION OFFICER WHALEY: Thank you, Your Honor.
16 Our recommendation is five months of custody, followed by no
17 supervision. Our written recommendation outlines our
18 justification for this recommendation, and I won't repeat
19 that here.

20 But I will just note that a custodial sentence of five
21 months provides a meaningful and punitive sanction here, that
22 we believe is significant enough to deter the defendant, and
23 others, without being unnecessarily harsh.

24 A sentence that follows this recommendation would be one
25 of the longest sentences for similar conduct imposed in this

1 country. Taking into account the unprecedented scope of the
2 offense here, while balancing what we maintain is an
3 extraordinary acceptance of responsibility, the defendant's
4 compelling personal history, and the post-offense steps taken
5 by the company.

6 If Your Honor is interested in imposing a noncustodial
7 sentence, we would recommend home detention, in the United
8 States, given the impossibility of oversight by this court,
9 if probation is imposed abroad.

10 Your Honor, I'm also interested in discussing the
11 government's recommendation for remand. And I'm not sure if
12 now is the appropriate time, or if you are interested in
13 hearing about that.

14 THE COURT: We'll take that up, if that's a
15 determination of the court. That completes your
16 recommendation?

17 PROBATION OFFICER WHALEY: Yes, Your Honor.

18 THE COURT: Thank you.

19 Counsel for the defense?

20 MR. BARTLETT: Thank you, Your Honor.

21 As you know, we are here today for sentencing of Mr. Zhao
22 on the single count he has pled guilty to, that is, failure
23 to maintain an effective money-laundering program at the
24 company that he founded and ran for many years, Binance
25 Holdings Limited.

1 And I know that's very obvious. But I say that because
2 when I hear the government discuss the crime here, they don't
3 seem to be talking about the actual crime. The crime that he
4 pleaded guilty to was not having an effective money
5 laundering program. They talk about a number of other things
6 that they may think is relevant. That is not why we are here
7 for sentencing today, and that is not what Mr. Zhao pled
8 guilty to.

9 On a personal level, I just want to say what a joy it is
10 to be in front of the court. It's been many years since I've
11 been here. And it has been really a great experience to be
12 back in front of the court. I want to thank probation -- as
13 you mentioned, I don't think there's another sentencing
14 report that I've seen like that, in this district, let alone
15 I think anywhere in the United States. The amount of work
16 that they clearly put into that report is remarkable, and is
17 an indication of the type of assistance that this probation
18 department has provided the court for years.

19 And I want to apologize to the court, because we have
20 imposed on you unmercifully. We have had so many letters
21 that came in that you had to go through. And I know Mr. Zhao
22 asked me, he said, "Do you think he'll read all those
23 letters?" And I said, "I guarantee you, he will read every
24 single letter that comes before him." Long sentencing
25 memorandums, a lot of things under seal, exhibits, a lot of

1 time for the court. And I know you have a full docket. And
2 we really appreciate all the work that you, and your staff,
3 Victoria, and everyone else did on this case.

4 Before I get to my statement, I just want to take two
5 seconds to introduce a few people who are here today, who
6 traveled to Seattle to show their support for Mr. Zhao. And
7 I'm not going to go through all of them, but I definitely
8 want to bring to the court's attention that his mother
9 Mrs. Zhao is here, that his sister Jessica is here, with her
10 son. And also that Mr. Zhao's son, Ryan, is also here.

11 And I know you've read all the letters. But I reread
12 Ryan's letter over the weekend. And I was struck by the
13 eloquence of what he wrote to the court. I'm just going to
14 quote one line from it. "The brushstroke of this situation,
15 while profound, does not define the canvas of the character.
16 I hope the scales of justice weigh not only the selective
17 actions, but also the essence of a loving father, who has
18 lived a life defined by values, morals and resilience." That
19 is really eloquent. I wish I wrote like that. And I just
20 wanted to make sure the court had a chance to consider it.

21 And finally, Mr. Zhao, and all of us, are very grateful
22 for the many people that wrote letters of support for him.
23 Senator Baucus wrote an incredibly eloquent letter to the
24 court. A number of government officials from the UAE. And a
25 number of persons that knew him personally, knew the company,

1 and supported him, are quite striking.

2 I'm going to keep my remarks short. Mr. Burck is going to
3 handle the majority of our arguments.

4 There are two things I want to focus on. They're not
5 really things I'm going to focus on, because I was so
6 impressed with the probation officers' report. I want to
7 talk about two things they said. At paragraph 55 of the
8 presentence report, the probation notes, and I'm going to
9 quote, "Defendant has shown a remarkable acceptance of
10 responsibility." Clearly, he's going to get the two points
11 for acceptance. But that isn't what they said. "He has
12 shown remarkable acceptance of responsibility." And that is
13 very, very true.

14 First of all, he traveled from the UAE, where he's a
15 citizen, a non-extradition country, to face these charges.
16 And you think he flew in here, really, that's not that big of
17 a deal. But I was struck, there's actually a case going on
18 in San Francisco right now, Mike Lynch. He was indicted in
19 November of 2018; a very rich person. It's a big case
20 involving fraud in the Northern District of California.

21 For four and a half years, Mike Lynch fought extradition
22 from the United Kingdom, which you would think would be a
23 pretty quick ticket, four and a half years he was able to
24 fight that.

25 But Mr. Zhao, had he wanted to spend his resources and his

1 time avoiding facing these criminal charges, he could have.
2 How long he could have lasted, I have no idea. Ten years,
3 15 years? I have no idea. He didn't do that. He chose to
4 voluntarily come here and face these charges, knowing full
5 well what he might be facing. He deserves credit for that.
6 And the probation department recognizes that.

7 He reached a plea agreement with the government, before he
8 even landed here. He directed his company, Binance, to also
9 resolve their problems with the government. And as was made
10 clear, it hasn't been discussed yet, it wasn't just that
11 Mr. Zhao and his company that he directed resolve the
12 problems they had with the Department of Justice, they also
13 resolved three other major investigations. The Office of
14 Foreign Asset Control, the Financial Crimes Enforcement
15 Network, and the Commodity Futures Trading Commission. All
16 three of those were resolved. And they weren't resolved
17 quickly and easily, and I might add, cheaply. Jointly they
18 paid the United States Government over \$4.3 billion.

19 Should you be able to buy your way out of your problems?
20 No, of course not. But is that an indication of acceptance
21 of responsibility? Absolutely.

22 He never minimized his conduct. As you read the letters
23 of support, you saw how many times Mr. Zhao had talked to
24 people honestly, admitted his mistake, and asked them for
25 their support.

1 Literally -- I sat down and I thought about it over the
2 weekend, I thought to myself, if someone was going to accept
3 responsibility, is there anything else they could have done,
4 to show the court how remorseful they are? And honestly I
5 couldn't come up with another factor.

6 There's one additional paragraph I want to bring to the
7 court's attention, also from the probation officer's report.
8 This is one of their very last paragraphs, paragraph 156.
9 "In contemplating a sentence outside of the advisory
10 guideline system, the court may wish to consider," and then
11 they listed six factors that they believe the court might
12 consider relevant, in looking at whether a variance from the
13 sentencing guideline range was applicable.

14 And here are the six factors that they identified. This
15 is from the probation office report. First, as we just
16 discussed, Mr. Zhao's exceptional acceptance of
17 responsibility is a factor for the court to consider, in
18 weighing whether a variance is appropriate.

19 Second, Mr. Zhao and his company's assistance to law
20 enforcement, which was well documented. And, in fact,
21 admitted by the Department of Justice personnel. The time
22 that Mr. Zhao has been forced to spend away from his family,
23 it's been going only six months that he's been away. As you
24 know from some of the hearings that we've had, he has a very
25 young child, he has two other young children. He has been

1 out of contact with them. He's out of contact with his
2 partner. He's had no visits with them at all. He's really
3 been here by himself.

4 And that was at the request of the United States. It
5 wasn't something he chose to do. The United States said: As
6 part of this plea bargain, this is what we are demanding that
7 you do. We made him available, and they insisted he remain
8 available in the United States.

9 His lack of criminal history. That seems to be almost a
10 given, accepted here. But as the court knows, oftentimes
11 that isn't a given. And it's more than just he has no
12 criminal history. There's not a hint of any wrongdoing in
13 his past. And there was an amendment to the guidelines last
14 year, the zero-offender adjustment. And I am not in any way
15 implying the zero-offender adjustment applies in this case,
16 because it doesn't. One of the factors comes into play, it's
17 not applicable.

18 But the underlying theory that generated this adjustment,
19 is applicable. And I'll read from the Sentencing Commission
20 new application notes. If a defendant received an adjustment
21 under 4C1.1, the zero-offender adjustment, and the
22 defendant's applicable guideline range is Zone A or Zone B of
23 the sentencing table, a sentence other than a sentence of
24 imprisonment is generally appropriate.

25 Why do I bring that to the court's attention? Because I

1 really do think it kind of codifies a change that is coming
2 about in the United States, with regard to the prior view
3 that the only real sentence that counts is one of
4 imprisonment, and that really everybody should go to jail.
5 The mass-incarceration view that really ran the criminal
6 justice system, both in state and federal, for many years,
7 trying a more reasoned, a more nuanced view of what is
8 appropriate.

9 THE COURT: Counsel, wasn't the mass-incarceration
10 approach designed specifically to address the
11 disproportionate sentencing for African-Americans, as it
12 relates to drug offenses and convictions for crack cocaine?
13 I think there are a number of books written on the same exact
14 topic, counsel.

15 MR. BARTLETT: I agree with that, Your Honor.

16 I think that the step-away that you're seeing, in a
17 variety of issues across this over the last, I would say, six
18 to eight years, is addressing many factors.

19 An area that we were first impacted with, with regard to
20 mandatory sentencing guideline ranges, where courts didn't
21 even have -- that was a period of time, and then we go
22 forward. But I do think that a person that has never had any
23 problems with the law, I think the court has to look at, is
24 this really a person we should be putting in jail?

25 THE COURT: One least question, counsel.

1 Is there anything that you can suggest that the mass
2 incarceration, that you're suggesting to the court, has
3 expanded to cover white collar criminal activity?

4 MR. BARTLETT: I don't --

5 THE COURT: I don't know that generally speaking,
6 people charged with white collar criminal offenses, generate
7 large or lengthy terms of incarceration or imprisonment.
8 Wouldn't you agree?

9 MR. BARTLETT: I appreciate that and I agree with the
10 court 100 percent.

11 THE COURT: Sir, you're in a courtroom. You need to
12 take your hat off.

13 Please continue.

14 MR. BARTLETT: The fifth factor that the probation
15 department recognized, with the collateral consequences that
16 flowed, and the court has already mentioned, simply because
17 he is not a U.S. citizen, if he were to go into jail, he is
18 not treated as the wide majority of people that go into
19 prisons are. And I want to emphasize this 100 percent.
20 We're not asking for him to be treated as some kind of
21 special, because he's a high profile person, he's wealthy.
22 Not at all. We just don't want him to be treated worse,
23 simply because he's not a U.S. citizen.

24 Finally, they mentioned in their report that there are
25 collateral consequences because he stepped down as Binance's

1 CEO. And clearly that was a position that he viewed he would
2 spend his life building that company and maintaining it; and
3 that no longer exists.

4 And finally, there is a seventh factor that I'm not going
5 to mention.

6 THE COURT: Before you move there, counsel. Counsel
7 for the government made a specific point, I believe a couple
8 times, about the fact that although your client has stepped
9 down, he still would benefit, profit-wise, from the continued
10 operations of Binance, as that company has not gone out of
11 business, correct?

12 MR. BARTLETT: He still is clearly a major holder of
13 Binance, no question about that. He just has no control over
14 the say in the company.

15 THE COURT: All right.

16 Please continue.

17 MR. BARTLETT: There is a seventh factor that has not
18 been mentioned in the probation officer's report, but I know
19 the court is very aware of, a factor I'm not going to discuss
20 here. But I would argue is perhaps one of the most
21 compelling factors that the court should consider.

22 And I want to mention that those six factors identified as
23 a possible consideration for the court to consider, by
24 probation, all point to a downward variance. All of the
25 factors that they identified, and recognized, and actually

1 documented in their report, support a downward variance.

2 None of the factors support an upward variance. In fact,
3 they didn't identify any factor that supported an upward
4 variance.

5 THE COURT: Counsel, on that point, probation still
6 recommends a period of incarceration, even though they are
7 including or have reflected different considerations for a
8 downward variance. Would you agree?

9 MR. BARTLETT: I agree 100 percent.

10 THE COURT: Please continue.

11 MR. BARTLETT: I would point out, as I read the
12 probation report, I think they recommend a five-month period
13 of incarceration. And then they list out six factors that
14 you may want to consider, for a downward variance.

15 THE COURT: To get to the five months of
16 imprisonment.

17 MR. BARTLETT: Beneath the five months.

18 I'm talking too long, and I know Mr. Burck here has to go.
19 I do want to take two seconds to just make some personal
20 observations.

21 I have got to know Mr. Zhao, I would think pretty well
22 over the last year. And I will say, unequivocally, he is one
23 of the most impressive and interesting people I've ever met
24 in my life. And I don't say that lightly. When you look --
25 when you read the presentence report, and you listen to his

1 background, it's like out of a Steven Spielberg movie. You
2 feel like: Oh, this can't all be true. He grows up in
3 China, dirt poor. His father, basically, is out of their
4 life, not because he chooses to be, but because he's going to
5 school, first outside of the city that they live in. Then he
6 moves to Vancouver for five years. He is in Vancouver for
7 five years, out of touch with his family.

8 And when you hear him talk about it, I would expect him to
9 say: Oh, you know, that was so horrible. But not at all.
10 He views all of those years as great years. He loved his
11 parents. Loved his sister. He said it was a great honor, in
12 China, to actually have a person in your family that was
13 accepted to college outside of China. It was a big honor to
14 have my dad over here going to school.

15 They come to Canada. You know, they're dirt poor. He
16 describes his bedroom, he could barely get the bed into his
17 bedroom. They had to basically hit both sides of the wall.
18 He had to crawl in at the end, and crawl out. Very crummy,
19 menial jobs. He worked at McDonald's. You know, his sister
20 always said, during these years, I always thought he was
21 going to be a volleyball coach. Why? Because he was the
22 captain of the high school volleyball team. He coached the
23 girls high school volleyball team. He refereed volleyball.
24 She really thought that was the way he was going to go.

25 But he doesn't. He's super smart. Very, very talented.

1 Gifted, with regard to computers. He gets hired, gets
2 recruited. He builds himself up. And eventually he starts
3 Binance in 2017. And he invests all of his money in there.
4 He takes a risk that 99.9 percent of the people in the world
5 would never do. And he makes it an incredibly good company
6 almost immediately.

7 And one of the factors that doesn't get enough play, in my
8 view -- so he establishes Binance in July of 2017, and almost
9 immediately, there is a devastating event that occurs, which
10 is China says: We're not going to allow crypto in the
11 country anymore. This is the fall of 2017. And virtually
12 everybody in China is going to lose all of their money. He
13 doesn't allow that to happen. He makes whole his Chinese
14 customers. And that gets recognized. And if you look at why
15 is Binance so quickly a huge going machine, it's because he
16 treated his customers with such respect, and protected them.

17 Did he make mistakes? Absolutely. That's why we're here.
18 Did he get into crypto because he wanted to make a gazillion
19 dollars? No. He got into crypto, because I think he wanted
20 to change the world. He believes in this. He wanted to
21 provide a finance system that would support people in Kenya,
22 as well as New York.

23 Did he make mistakes? Absolutely. Absolutely. Was some
24 of it motivated by finances? Absolutely on that, also; but
25 not all of it. I've never -- I've honestly never heard him

1 talk about money. He wanted to make a difference in the
2 world.

3 And what I find so great -- and I will wrap it up here --
4 he still wants to make a difference in the world. I have no
5 doubt in my mind that his educational pursuit to provide
6 education to people all across the globe, is going to be a
7 huge success, and that he will do it. And he will make that
8 happen.

9 What we're asking the court is to let him have that chance
10 to fulfill those dreams.

11 And I'm going to let Mr. Burck take over.

12 THE COURT: Thank you, counsel.

13 Counsel.

14 MR. BURCK: Thank you, Your Honor. William Burck for
15 Mr. Zhao.

16 As my colleague, Mr. Bartlett said, we, as the court has
17 also mentioned, we were extremely impressed by the incredible
18 work that probation did. We don't necessarily agree with the
19 final outcome of five months that they recommended. But the
20 amount of attention to detail, attention to the facts,
21 attention to the law that they have shown, has been
22 incredibly impressive. So we thank probation for their work.
23 And, of course, we thank the court for its time and diligence
24 with this case.

25 In contrast, Your Honor, we have very closely reviewed, of

1 course, the government's submission in this case. And as the
2 court noted, the government is seeking double the top end of
3 the range, under the guidelines. Actually, it's more than
4 double, given the court's ruling this morning, that the
5 two-level enhancement does not apply.

6 Your Honor, when we read the government's submission, and
7 I say this as a member of the defense bar, it read to us like
8 the kind of submission that a desperate defendant would
9 write. Because the defendant, in those desperate cases,
10 says: Ignore the guidelines. Ignore the law. Ignore the
11 facts. The guidelines are wrong.

12 And today we heard an extraordinary statement from the
13 government, that the guidelines are wrong; they're flawed.

14 The government simply, and to their credit, openly, says
15 that the Sentencing Commission, that the Congress, that the
16 prior courts, in every case that have dealt with a similar
17 situation, are all wrong.

18 And the government believes that its policy view, its view
19 that the BSA has not been taken seriously enough by the
20 Congress, that passed the statute, by the Sentencing
21 Commission, you know, judges and other esteemed members of
22 the bar, to review exactly what Congress intended, exactly
23 what would be fair, what the law requires; that they're all
24 wrong. And that the judges who have decided all of these
25 cases, are all, every one of them, wrong.

1 And the government wants this court to adopt their policy
2 position, contrary to all of the cases, to the Sentencing
3 Commission, to the Congress, and impose an extraordinarily
4 punitive and completely unfair sentence on Mr. Zhao.

5 And, Your Honor, you asked a question which I think
6 Mr. Mosley said he could not answer, because this was such a
7 unique case. You asked the question, what is a case that
8 this court should be linking itself to, linking its thinking
9 to, in terms of imposing a fair sentence.

10 Your Honor, we can point to, and we have in our brief, to
11 a dozen cases -- more, in which there is not a single case,
12 in which a person convicted of a BSA offense, this BSA
13 offense, failing to maintain an effective AML program, with a
14 criminal history of one, where there's no fraud alleged,
15 there's no other crimes alleged; who has been sentenced to
16 prison. Not a single one.

17 And the most useful case, in our view, is the *U.S. v.*
18 *Hayes* case. That is the BitMEX case. That's the case that
19 Mr. Mosley acknowledged that those three defendants, in his
20 words, got a good deal, because the court said, "I'm going to
21 give them probation." So they got a good deal from the
22 court, according to Mr. Mosley.

23 Your Honor, I'd like to spend a little time on that case,
24 and I know it's in our memorandum, but I think it's important
25 to spend some time in that case, to understand why that case

1 is a very relevant and useful precedent for imposing a
2 sentence on Mr. Zhao.

3 And before I do that, I just want to mention that, again,
4 probation did a remarkable job with the PSR. But there were
5 a few factors they didn't really consider, when they came to
6 their five-month recommendation. One of those, we would
7 submit, is they didn't fully consider the
8 sentencing-disparity issue, which the court has already noted
9 is an important issue.

10 They also didn't consider, as much as we think they should
11 have, the effect of Mr. Zhao being incarcerated in the United
12 States, as a non-citizen. And I'll touch on that in a bit.
13 And they also did not really consider the matters that are
14 under seal before the court.

15 You but starting with the sentencing-disparity issue and
16 the BitMEX case, the *U.S. v. Hayes* case. In that case there
17 were three defendants, the CEO, COO, CTO, this is the chief
18 technology officer, who were all indicted and fought for
19 17 months before -- in pre-litigation, before trial, against
20 a BSA charge. Same BSA charge in this case.

21 And in that case the government described the BitMEX
22 platform as, in effect, a money-laundering platform. There's
23 no such allegation in this case that Binance was, in effect,
24 a money-laundering platform.

25 Were there problems on it? Were there crimes that may

1 have been committed? And, certainly, was the crime of not
2 having an AML program committed? Yes. But never did the
3 government allege, and there are no facts to support that
4 Binance was a money-laundering platform.

5 That case also, according to the government's own press
6 release for that case, said that the CEO and the COO had
7 personally communicated, directly, with people located in
8 sanctioned countries, particularly in Iran. Directly with
9 those people. Knew exactly who they were dealing with. Knew
10 exactly what they were doing.

11 There is no such allegation here against Mr. Zhao. There
12 is no evidence that he was speaking to Iranians, or speaking
13 to anyone else from sanctioned countries. And also the
14 government in that case, in their press release, described it
15 as a money-laundering platform that laundered billions of
16 dollars of transactions.

17 Now, the government wants the court to say: Well, BitMEX
18 is not as bad, because Binance is a lot bigger. The scale
19 was a lot bigger, just a much, much larger company, and
20 therefore, the court should hold Mr. Zhao personally
21 responsible, because he had a bigger, more successful
22 platform. Which was not a money-laundering platform, by any
23 evidence, or even by the allegation of the government.

24 And also, even by their own assessment, the amount of
25 transactions that involved sanctioned entities, was about

1 .0004 percent of all the transactions, the trillions of
2 transactions that Binance processed.

3 And because of that scale, they want this court to say,
4 Mr. Zhao should go to prison for 36 months.

5 Your Honor, that is also why they have to say that the
6 guidelines, and the Sentencing Commission, and the Congress,
7 and the courts, have all been wrong, have all just missed it.
8 Because the guidelines themselves, do not provide for a
9 single enhancement, a one point, two point, any enhancement
10 for scale.

11 The only enhancement that's in there is for fraud. So the
12 Sentencing Commission knew that -- when they were drawing up
13 their recommendations, they understood that fraud is
14 something that should lead to an enhancement. They put it in
15 there. There is no allegation of fraud in this case, as the
16 court is well aware.

17 There is nothing in the guidelines, in the policy, in the
18 statute, that says anything about scale, that a company,
19 because it's much bigger, and much more successful, and a
20 person who runs that company, should be much more harshly
21 treated, than someone who has a less successful or smaller
22 business.

23 THE COURT: Counsel, one of the things the government
24 points out, I believe a few times in their recommendation to
25 the court, is that the fact that Binance didn't have any

1 controls, they essentially turned a blind eye to the dark web
2 opportunities for individuals to transact in activities that
3 may have involved terrorism, drug transactions, trafficking,
4 and a host of abuses around the planet.

5 So shouldn't that be a factor in terms of the fact that
6 your client is not accused of specific activity, but by the
7 indifference or the insouciance he engaged in, they simply
8 said: It just happens, but we're not responsible for those
9 things?

10 Isn't that a factor for the court to consider.

11 MR. BURCK: Absolutely, Your Honor, it is. And
12 Mr. Zhao has taken responsibility for what allowed,
13 potentially, those types of issues to occur. He did not have
14 the right AML program. He did not have an effective AML
15 program. That is the offense, that's the exact offense that
16 is what he pled guilty to. That's what all these other
17 individuals pled guilty to.

18 They plead guilty to the fact that they do not have a
19 program in place that allows potential bad actors, sanction
20 violators, drug dealers, whatever it would be, to operate on
21 their exchange. That offense is encapsulated, is
22 incorporated, or those factors are encapsulated into the
23 actual crime to which Mr. Zhao has pleaded guilty.

24 So every single person who pleads guilty to an offense
25 like this, including the three people in the BitMEX case,

1 they had exactly the same situation. In fact, it was worse,
2 according to the facts and according to the government's own
3 press releases, because they were interacting directly with
4 people they knew they couldn't be interacting with. And they
5 were running, according to the government, a money-laundering
6 platform.

7 So in this case, the fact of having -- exposing the U.S.
8 financial system to those risks, those are already
9 incorporated. And that is part of the crime that Congress
10 has passed, and that the Sentencing Commission has examined.
11 That is the actual crime.

12 And this is not to minimize it in any way, because
13 Mr. Zhao has taken full responsibility for it. But that is
14 how the factor is already taken into account.

15 And that's why we believe that there has never been -- and
16 we've looked across the landscape, for every single, any case
17 that could possibly have had incarceration with someone like
18 Mr. Zhao, again, with no criminal history, no fraud, no other
19 crimes committed. And we have found not a single judge who
20 has ever put that person in prison.

21 And we think part of the reason for that is because, to
22 the court's question, the judges in those cases understood
23 that the crime they've committed does expose the U.S.
24 financial system, just the way the court has laid it out.
25 But that's the crime.

1 Then the question is, what are the factors that will lead
2 to the sentence, beyond the base level. In these cases, all
3 of these cases, the courts look at the record, and they
4 determine that incarceration is not appropriate. Even when,
5 in BitMEX, they were running a money-laundering platform.
6 That was what the government said they were doing. They
7 didn't even seem to have any other legitimate purpose.

8 THE COURT: Counsel, in your assessment of what other
9 judges were doing or considering, would it be perhaps that
10 incarceration wasn't a consideration, because of the size of
11 operation? And I think everyone is on the same page, in
12 agreement, that there is no other case, that this is
13 unprecedented in terms of the volume, scale, and massiveness
14 of the dollar impact from noncompliance with the regulations
15 of the United States Government.

16 MR. BURCK: Your Honor, respectfully, I don't believe
17 that is a factor that was considered. Although BitMEX was
18 much smaller than Binance, BitMEX was a very large operation,
19 in terms of the actual offenses that occurred. It was not as
20 large as Binance, but in terms of the proportion of illicit
21 activity that was actually going on on that platform, it was
22 much larger than Binance.

23 But also, Your Honor, there are cases -- not BSA cases,
24 and we reference them in our submission -- there are cases in
25 which -- BNP Paribas, Wells Fargo, JPMorgan, many, many very

1 large banks have been subjected to deferred prosecutions, or
2 informations and guilty pleas, for much, much larger amounts
3 of actual illicit activity. In those cases, they dealt with
4 terrorism financing, they dealt with weapons of mass
5 destruction proliferation, things that, again, we don't have
6 any evidence of in this case.

7 And in those cases, Your Honor, not a single person was
8 charged individually. And all of those cases, BNP Paribas
9 paid \$8.9 billion to the United States Government, pursuant
10 to a guilty plea. Not a single executive was charged,
11 despite the fact that the statement of facts in that case
12 said that the high-level executives and senior bank
13 officials, were well aware of what was going on. And in that
14 case, the government chose not to charge anyone.

15 In all the cases we mentioned, the *Danske* case, \$2 billion
16 was paid by *Danske*, for not having an effective AML program.
17 Again, the allegation is that the high-level executives at
18 those banks, at that bank, knew about this. No one was
19 charged.

20 And in all of those cases that we reference in our
21 submission, in none of those cases were individuals charged.

22 And the reason I mentioned that is because I think it goes
23 back to the fact that scale itself is not something that the
24 BSA was intended, or was meant to punish, independent of the
25 crime itself. The crime itself is the failure to have a

1 money laundering program, right? An anti-money laundering
2 program. That is the crime that Congress has passed and the
3 Sentencing Commission has addressed.

4 The scale of what offenses occur within that particular --
5 that are caused by the failure to have an AML, is not
6 something that Congress or the commission have ever said.
7 And, in fact, clearly by implication they've rejected the
8 idea that just because have you a much bigger business, that
9 therefore you end up with a much harsher sentence.

10 That is just something that has never been done in any of
11 these cases. And these cases have been going on well over a
12 decade. And also there have many sentencings recently.

13 And with the bank cases, just as an analogy, we're talking
14 about violations of IEEPA, the Trading With the Enemy Act,
15 acts that deal directly with actual violations of serious
16 terrorism laws, and similar laws.

17 In those cases, we don't have individuals being charged at
18 all. And the companies pay very large fines to resolve the
19 case.

20 So we think that the broad scope of what has -- what we
21 see in the case law, and the way the Sentencing Commission
22 has dealt with these cases, suggest that -- or strongly show
23 the scale is not the issue. And it makes sense. Because,
24 again, if Binance was like BitMEX, a money-laundering
25 platform, then I don't think that Mr. Zhao would be sitting

1 here today pleading guilty, or having pled guilty, being
2 sentenced to a BSA violation.

3 Instead, he have committed massive amounts of money
4 laundering, he would have committed massive amounts of
5 terrorist financing, or contributed to it. This is not that
6 case.

7 This is a case in which he has a legitimate business. And
8 it's still around, because it is a legitimate business. Now
9 it's much more legitimate, because they've taken so many
10 remediation steps, over the course of years, well before --
11 Mr. Mosley said when they were caught. I'm not sure what he
12 meant by that.

13 They had been doing remediation well before the plea
14 agreement, years before the plea agreement. They were
15 putting in AML policies well before that. And, of course,
16 they've taken more steps, since they were under investigation
17 and since the plea. And they've taken so many steps that
18 they are now the gold standard in the crypto industry, for
19 compliance.

20 THE COURT: Are you suggesting, counsel, that they
21 took these steps, absent any law enforcement or entity
22 engaged in investigation of Binance or it's financing, or
23 lack thereof?

24 MR. BURCK: Your Honor, in some ways, yes. Because
25 there is evidence that when Mr. Zhao found out, and this is

1 referenced in the submissions, found out in 2019 that there
2 were U.S. users on the platform, and that they might be
3 interacting -- because of the algorithm between -- that
4 Binance had to allow for trades, that there might be some
5 risk for actual trading between Iranians, for example, and
6 Americans. He did say: We need to try to stop that. And
7 that's referenced in our sentencing submission. So there
8 were efforts to do that.

9 Now, of course, Your Honor, the efforts were not
10 sufficient. And no one -- and Mr. Zhao is not going to say
11 it's sufficient, and none of us is going to say it was
12 sufficient. And, of course, the investigation, when they
13 learned of the investigation, a couple years later, they
14 started improving their policies and their procedures.

15 They started doing that before the guilty plea, long, long
16 before the guilty plea. And the efforts they've made have
17 made them truly the gold standard in the crypto industry.

18 And the company, of course, has concluded its issues with
19 the government, and it's operating. It's operating, not in
20 the United States, other than through -- there's a subsidiary
21 it has here. But it's operating, and it's functional, and it
22 is successful.

23 That's because it's a legitimate business, which is not
24 the case in all these other cases that we see where the BSA
25 is being used, and where we see the money-laundering

1 platform, a crypto money-laundering platform being addressed
2 in the BitMEX case.

3 Your Honor, so in those cases -- and I do think, as well,
4 the reason BitMEX is important, I mentioned this before, is
5 that these were indicted individuals, who fought for
6 17 months, before they came to agreement. They had -- I
7 think the CEO had a six to 12-month range. The COO had a --
8 a range of similar amount. They each got probation.

9 And the reason for that was because the courts looked at
10 the individual characteristics of the defendants, and decided
11 that in this particular case, we're not going to put them in
12 prison. And that has been the uniform decision of every
13 single judge in this country who's looked at a person, like
14 Mr. Zhao, with no criminal history, no fraud, no other
15 crimes, who has committed a violation of this particular act.

16 And the government has never pointed to a counterexample,
17 of any sort. And in their submission, as the court knows,
18 they have no counterexamples.

19 They use the BitMEX case to say: Well, BitMEX was not as
20 bad as Binance, because of scale. And I've already addressed
21 the scale issue. We don't think scale is a relevant factor.

22 Your Honor, just briefly on terms of the cases where there
23 have been people subjected to imprisonment with a BSA
24 violation, there's the *Rando1* case, which was a Central
25 District of California, 2024 case. That was a crypto cash

1 exchange. And in that case they -- the defendant had made
2 false statements to banks, effectively bank fraud, as part of
3 the transactions that were occurring. And also had falsely
4 claimed that he was FinCEN registered.

5 He made all kinds of false statements that were included
6 and part of the record. And in that case, the court decided
7 to give that defendant time in prison. And that defendant
8 also had a prior conviction for drug-related offenses. And
9 was also apparently an opioid addict. So the court decided
10 to put that person in prison.

11 His guidelines range was 6 to 12 months, and he got four
12 months in prison.

13 In the *G&A Check Cashing* case, the manager had prior
14 convictions -- convictions; and was then sentenced to
15 incarceration.

16 In the *Ali* case, there were multiple charges, not just the
17 BSA. And the defendant pleaded guilty to the AML charge, the
18 BSA charge. But there were underlying fraud allegations, as
19 well. And in that case, the defendant got 13 months in
20 prison.

21 Here, there's no fraud. There's no criminal history.
22 There's no minimization of his role. There's no lying to
23 federal agents. There's no lying about registrations.
24 There's no obstruction. Mr. Mosley suggested, at one point,
25 that Binance had tried to hide what it was doing; and it

1 seemed, by implication, to be from law enforcement.

2 But as the court knows, there is no obstruction allegation
3 in this case. There's no obstruction evidence in this case.
4 What I believe Mr. Mosley is referring to, were internal
5 documents that Binance had created, back in the 2019
6 timeframe, to conceal the fact, internally, that there were
7 U.S. people. And the company and Mr. Zhao admitted that.

8 But that's -- I only wanted to correct that, because I
9 didn't want the court to be left with the impression that
10 there was some kind of obstruction element here. In all
11 these other cases, there's often an obstruction element. And
12 in this case, the falsification of the internal records was
13 designed -- again, not to excuse it -- to conceal it
14 internally, but it was not being sent out to the government.

15 In fact, that information was provided to the government
16 as part of Binance and Mr. Zhao's cooperation with the
17 government, prior to the plea. So the reason the government
18 found out about that stuff, was because Binance, under
19 Mr. Zhao's direction, gave it to them. That's how they found
20 out about it. That's why there's no obstruction allegation
21 in this case.

22 Your Honor, I would like to turn to -- unless the court
23 has further questions about the sentencing-disparity issue.

24 THE COURT: Not at this time, counsel.

25 MR. BURCK: I'd like to turn to -- briefly to the

1 acceptance of responsibility. We've heard a lot about that
2 today.

3 One thing that the court mentioned during Mr. Mosley's
4 presentation, that struck me, was the question of: What
5 credit are you giving Mr. Zhao for any of these other things
6 that he's done, any of the things that are positive for him?
7 Like his acceptance of responsibility, and in the case of the
8 court mentioned for his good acts, and his characteristics.
9 And Mr. Mosley said: Well, we gave it, but he couldn't
10 really articulate it. It doesn't seem it's possible, given
11 that they want to double, or more, his sentence from the
12 guidelines.

13 But the acceptance of responsibility here is, we think,
14 truly extraordinary, for all the reasons we mentioned, and
15 we're not going to belabor it. That he came to this country,
16 voluntarily. That he didn't know if he was going to be
17 incarcerated, at some point when he got here, before he was
18 going to be sentenced. That he doesn't know if he'll be
19 incarcerated after today. And.

20 He came here, and he didn't have to. And he is very
21 wealthy. And who knows how long he could have been in the
22 UAE, or traveling the world, and evade U.S. arrest.

23 But the reason why we think that's particularly important
24 to consider is that -- and this goes to the deterrence point
25 that the government has made -- that the idea that Mr. Zhao

1 should be used for general-deterrence purposes, to scare
2 everybody else around the world from engaging in AML
3 violations, or engaging in BSA violations, that runs counter
4 to another aspect of deterrence, which is that Mr. Zhao did
5 all these things, he came to the country, he accepted
6 responsibility, he subjected himself to the legal process of
7 the United States, and he did it knowing that there was no
8 guarantees. But he believed that there would be fairness in
9 the process. And he has received fairness in the process.

10 And the government's suggestion that, instead, he should
11 be punished for all of these things that he's done. That he
12 should get much more than anyone has ever gotten for a
13 similar offense, for a similar type of person.

14 That actually acts as deterrence in the opposite
15 direction, in our view. If there are people out there,
16 around the world, who have done something wrong, a BSA
17 violation, or another violation, and they want to get right
18 with the United States Government, they want to do the right
19 thing, they want to accept responsibility, that if they are
20 going to see a result where Mr. Zhao, having done all these
21 things, and all his characteristics, that he's going to be
22 punished, because the U.S. Government doesn't like the
23 guidelines, in their own words, Your Honor. They don't like
24 the system that the U.S. has set up. They want their system
25 to be imposed.

1 What kind of deterrent effect is that going to have on
2 future people who want to do right by the U.S. Government,
3 and by themselves, and accept responsibility? That deterrent
4 effect, we think, turns against the government. And it hurts
5 what we believe they're trying to achieve, which is law
6 enforcement. If people see someone like Mr. Zhao being
7 punished excessively, brutally, and completely, in their own
8 admission, against the recommendation of the guidelines, I
9 would submit that a lot of people are going to decide, you
10 know what, I'd rather stay in my country and take my chances.
11 Which is clearly not what they're trying to achieve. And
12 that's the opposite of the deterrent effect they should be
13 trying to achieve.

14 Your Honor, on Mr. Zhao's personal history and
15 circumstances, which Mr. Bartlett has gone into in detail,
16 and probation has done a wonderful job of going through in
17 great detail, I would highlight that there are obviously a
18 lot of people who have written for him. 160 letters. The
19 majority of those, Your Honor, were not solicited.

20 Of course, defense lawyers, when we come to sentencing, we
21 ask our client, you know, we have to -- we would love to get
22 people, your family, friends, colleagues, who would like to
23 say something on your behalf, submitted to the court.

24 In this case, there were a number of those. But the
25 majority of those were unsolicited. There were people who

1 know him, who know about his situation, who sent in letters.
2 And there are also tons of letters that are not really
3 letters, but they're on Twitter or X, on social media,
4 supporting him.

5 And it speaks to the kind of person that he is. And it
6 speaks to the efforts he's made, and the philanthropic
7 endeavors that he has engaged in, for years before this case,
8 and doing now. The educational efforts, the humanitarian
9 efforts.

10 All these things that he's done, he's done not because
11 he's trying to impress the court so that you can hopefully
12 give him leniency. He did it because that's who he is. And
13 that's what you know, from seeing what these people have said
14 about him, and what they continue to say about him.
15 Unsolicited, for the most part.

16 And we think that means something, that someone like him,
17 who is a very well known person, but also can be -- there are
18 a lot of people very well known that are very controversial
19 people. And of course, he pled guilty to a crime. Yet all
20 these people say this is a really good person. This person
21 is doing a lot for people, for his industry, for education.
22 And we think that means something.

23 And, of course, the court will take that into
24 consideration under the 3553(a) factors. But we think that
25 really bears some emphasis.

1 Your Honor, I'd like to briefly talk a bit about the
2 non-citizen aspect of this, and how that could also affect
3 incarceration. And this is one of the points that probation
4 did not really focus on, in their recommendation on five
5 months.

6 And on that, it's very simple that because he's a
7 non-citizen, he cannot -- he's ineligible for a minimum
8 security facility. And he will have to, then, go to a higher
9 level, or more secure facility. And, again, as Mr. Bartlett
10 said, we're not seeking any kind of special treatment, but we
11 are asking that the court consider his specific
12 characteristics, and his specific situation, in rendering a
13 sentence.

14 Because he is so well known, because it is well known to
15 everyone that he is wealthy, because there is obviously the
16 Binance cooperation that he has ordered, as part of the plea,
17 before he stepped down as CEO, because of the massive record
18 of the cooperation that Binance has engaged in, there is a
19 real risk to him in being in a facility like that.

20 If he was a U.S. person -- and, again, we're not asking
21 for special treatment -- but if he were a U.S. person, he
22 would clearly be eligible for a minimum security facility,
23 because of his characteristics and because it's a non-violent
24 offense, it's not a fraudulent offense. And here he is not.

25 So we think that should be taken into account. On top of

1 all the other issues that we've mentioned, we think that's an
2 important feature for the court to consider.

3 Then, finally, Your Honor, just briefly, I've already
4 mentioned the other factors of deterrence. We believe that
5 the government has effectively admitted that they're really
6 looking for general deterrence here. Mr. Mosley did say:
7 No, we're really looking for specific deterrence. But the
8 government's submission, as the court has seen, is entirely
9 about general deterrence.

10 And I'd like to just previously read -- and this is in our
11 submission -- but I think it's just worth hearing in open
12 court, what Judge Koeltl in the Southern District of New York
13 wrote about the concept of general deterrence, or said at a
14 hearing of the BitMEX case, about the concept of general
15 deterrence. Because the government made the same argument as
16 they made here, today, about BitMEX. And, again, a situation
17 where that was a money-laundering operation, according to the
18 government.

19 Judge Koeltl wrote: Any sentence must be just for the
20 individual defendant. If we impose a sentence on the basis
21 of general deterrence, that wasn't just for the individual
22 defendant, we would end up using the law to impose sentences
23 on individuals that were not just for the individual
24 defendants, and that would be contrary to our law.

25 So you expect that a sentence which is just for the

1 individual defendant, will be sufficient for purposes of
2 general deterrence. And you ought not to be able to attempt
3 to justify a sentence, based upon the message that it sends
4 to others, unless you could say that the sentence is just for
5 the individual that you're sentencing.

6 Otherwise, you're just treating that defendant in a way
7 that is not just for the individual defendant.

8 And we think that Judge Koeltl really encapsulated the
9 problem with the government's argument, which he heard,
10 himself, two years ago. The same argument they're making
11 today, which is that this is all about general deterrence.
12 They said they don't like the guidelines. They said they
13 don't think the BSA is being taken seriously enough. They
14 said that there should be enhancements added to the BSA, to
15 the sentencing guidelines, based on their preference for
16 higher sentences.

17 They said, Your Honor, they want a disparate outcome here,
18 because they don't like the fact that sentences that have
19 been imposed before are too low; they're probationary. They
20 want a disparate sentence; that's what they're seeking. And
21 they're trying to justify that by saying this case is
22 different than all others.

23 Your Honor, the thing that we submit, respectfully, that
24 is different about this case than all those others, is that
25 Mr. Zhao has accepted responsibility, in ways that those

1 defendants never did.

2 They went -- they were indicted. They spent 17 months
3 fighting the case. Then they pled. They were running
4 money-laundering operations. They were engaged in all kinds
5 of direct fraudulent behavior that Mr. Zhao is not involved
6 in. They did not build a business that is a legitimate
7 business, that did have problems, and it did commit a crime,
8 and has accepted responsibility for that. They did not come
9 from the UAE and submit themselves to the U.S. legal process,
10 without being forced to, on their own volition. They did not
11 do all the things that Mr. Zhao did, long before this case
12 ever existed, to help people, to help people around the
13 world. They did not do the things that he has done for
14 years.

15 And Mr. Mosley has also suggested that because Mr. Zhao is
16 so wealthy, that he can do all these things, and maybe that
17 shouldn't really -- because he's rich, we really shouldn't
18 treat him -- we should treat him worse, in some ways, than
19 others.

20 But the reality is, this is a person who came from China,
21 from very humble beginnings. His family fled because of
22 Tiananmen Square. And he built a business out of nothing.
23 And it did commit a crime, but it's a legitimate business,
24 which is very different than all these other cases. And we
25 think that all weighs against incarceration in this case.

1 And, again, although probation, we do think they did a
2 wonderful job, and they gave him a tremendous amount of time,
3 and spent a lot of time with Mr. Zhao, and they did a very
4 thorough report, our only disagreement with them is that we
5 believe a downward variance, beyond five months, to
6 probation, is warranted, given the factors that we've
7 discussed today, that are not really taken to full account by
8 them.

9 Particularly, the disparate sentence outcome, looking at
10 the different -- the defendants in each of these cases, and
11 how they compare to Mr. Zhao, and how he's led his life and
12 run his business, as well as the fact he's a non-citizen, as
13 well as, Your Honor, the matters under seal, which we cannot
14 discuss, but we know the court has read thoroughly.

15 So, Your Honor, I'll just close by saying that Mr. Zhao --
16 and you will hear from him, and he's the most important
17 person you'll hear from today. He will tell you, in his own
18 words, as he has already said in his plea, as he said
19 publicly, after he pled guilty, when he posted on social
20 media. He knows he did wrong. He knows that he committed a
21 crime. He wants to make up for it. He wants to be sentenced
22 for it. He wants to take full responsibility for it. And he
23 will do that again today.

24 But I don't think anybody, even the government, believes
25 that Mr. Zhao, with all the things he's done, and all the

1 things that he's done in this case, really is not accepting
2 responsibility. And he's accepting responsibility in ways
3 that these other defendants, who got probation, never did.
4 And I think that's an important fact for the court to
5 consider.

6 Your Honor, I was going to ask for a sidebar just on the
7 sealed matter, just to see if the court wanted any argument
8 on that. But if is court is satisfied on the sealed matter,
9 I won't --

10 THE COURT: Counsel, as I indicated previously, the
11 court checked the docket as of 5:00 p.m. yesterday. No one
12 has represented to the contrary. Every submission to this
13 court was considered and read. The court does not need to
14 take additional or further argument on those issues, or any
15 other issues before this court.

16 MR. BURCK: Thank you, Your Honor.

17 THE COURT: We're going to take a recess at this
18 time. When we return, I'll hear from Mr. Zhao, and then the
19 court will impose its sentence at that time.

20 (Recess.)

21 THE COURT: Good morning, please be seated. Before
22 we begin, it's come to this court's attention that someone
23 has taken photographs during this court proceeding, and, in
24 fact, has already posted those images on the Internet, or
25 whatever else you use for social media. That is completely

1 improper.

2 If the court becomes aware of the individuals that take
3 any images, for the balance of this proceeding, and post
4 them, you may be subject to contempt of this court. Because
5 I'm ordering specifically, in compliance with our rules for
6 this jurisdiction, you're not supposed to take photographs in
7 this court.

8 So I trust that everyone will abide. If anyone can't
9 abide by that, we have two officers who are present in the
10 court that will assist in that being enforced.

11 So with that, Mr. Zhao, I don't want that to reflect upon
12 the importance of what you have to share with this court this
13 morning.

14 And, sir, this is your opportunity to address the court.
15 You're not required to say anything, if you choose to remain
16 silent. But it appears you do wish to address the court.
17 And I have read your letter. But this is your opportunity to
18 share anything you'd like me to know and consider.

19 Mr. Zhao, you have the floor.

20 THE DEFENDANT: Thank you, Your Honor. I appreciate
21 the opportunity to address the court directly. I will be
22 brief. I failed here. I deeply regret my failure, and I'm
23 sorry. Five and a half months ago, I left my family to come
24 to the United States, to take responsibility for my actions.

25 Some people were surprised that I flew in from a

1 non-extradition country. But those who knew me well, were
2 not surprised. That's because responsibility is a core value
3 for me; and I live by it. I believe the first step of taking
4 responsibility is to fully recognize the mistakes.

5 Here I failed to implement an adequate anti-money
6 laundering program, in the company I founded. I also
7 recognize the seriousness of that mistake, and also recognize
8 the importance of having a robust KYC/AML program. That is
9 why I directed Binance to fully cooperate with the U.S.
10 Government's investigation, which has been done.

11 Another important part of taking responsibility is to
12 correct the mistakes. Years before I flew here, before I
13 learned of the investigation, we did start to implement a
14 KYC/AML program. I also directed Binance to fully remediate,
15 which has been done now.

16 I also directed Binance to resolve with the U.S.
17 Government, which has also been done. In my mind, I wanted
18 to do everything possible, before stepping down as CEO,
19 including fairly extensive efforts that we undertook to build
20 an industry-leading compliance program.

21 Stepping down as CEO of the company, I found was not easy.
22 It took a while for me to mentally accept that and transition
23 onwards. Over the last five and a half months, I've had a
24 lot of quiet time alone to think and to reflect. I fully
25 recognize the seriousness of the mistakes I made. And, of

1 course, I can assure you there's no way for them to ever
2 happen again. I've learned an important lesson here, that I
3 will carry with me. This period also gave me time to think
4 about my past and future.

5 I come from humble beginnings. I came from a
6 first-generation immigrant family, to Canada. Both of my
7 parents, while having academic backgrounds before they
8 immigrated, they worked on close to minimum wage jobs in
9 Canada. They never complained. Although we were tight on
10 finances, both of my parents worked really hard to give me
11 opportunities. And because of those opportunities, I've been
12 very -- I've been able to achieve a level of success in my
13 life. I'm forever grateful for that.

14 For the next chapter of my life, I want to provide
15 opportunities for others, namely our youth. I'm building a
16 platform to provide high-quality education for
17 underprivileged kids, all around the world, for free. I
18 believe, with the technologies we have today, it is possible
19 to make online education better and more widely available
20 than what we have today. I believe this can help millions or
21 hundreds of millions of kids all around the world, giving
22 them opportunities for better jobs, and also life.

23 I started this project already for the last couple of
24 months. And we're making good progress. I find this new
25 work extremely rewarding and meaningful.

1 Lastly, I want to thank my family and friends, some of
2 whom are here today. I want to thank everyone who wrote
3 letters of support for me, most of whom I did not even ask.
4 And all the people on social media, or anywhere in the world,
5 for supporting me, and standing by me in this difficult time.

6 I also want to especially thank the probation office, for
7 taking the time to talk with me and understanding me as a
8 whole person. They gave me a new level of respect for the
9 U.S. judicial system. I also want to thank Your Honor, for
10 your time and consideration.

11 Thank you.

12 THE COURT: Thank you, sir. You may be seated.

13 Mr. Zhao, this court is mandated to calculate an
14 appropriate guideline range, which I have done, and look at
15 any traditional variances or departures that might be
16 applicable, in view of the circumstances; which the court has
17 done that as well. I'm also charged with considering all the
18 3553(a) factors in the sentencing guidelines.

19 It's my practice to go through each of those factors, so
20 you have a clear understanding of my thoughts and processes
21 as I went through those factors in determining and arriving
22 at the proper sentence in this case.

23 Sir, first, I begin with your history and characteristics.
24 The reason I asked counsel for the government to weigh in, is
25 to hear from the government in terms of their perspective of

1 how your background, history, and things that you've done,
2 should factor in your sentencing. And to be honest with you,
3 sir, everything I see about your history and characteristics,
4 are of a mitigating nature and a positive nature, because of
5 what you've done.

6 I note first, that you have no criminal history. I note
7 that you have lived a law-abiding life, but for the facts and
8 circumstances of this case.

9 The court also notes that you voluntarily agreed to come
10 to the United States, despite the challenges that may have
11 presented themselves with extradition, and fighting the same.

12 The court also finds that you accepted responsibility, by
13 the fact of the large payment that was made to the Commodity
14 Future Trading Commission.

15 The court also does certainly recognize how you were
16 raised, in humble beginnings, but you embraced those humble
17 beginnings to pursue education your and vigorously pursue the
18 development of a company that became Binance.

19 The court also looks to the fact that you took
20 extraordinary steps and significant steps, in terms of your
21 level of cooperation with law enforcement, in their
22 investigation. These are all factors that I've looked at in
23 your history and characteristics.

24 Next, sir, I look at the nature and circumstances of the
25 offense. And this is aggravating. Aggravating to the extent

1 that you were a money transmitter, with registration
2 requirements with the United States Treasury. You were the
3 CEO of Binance, and you made the strategic decisions, and
4 exercised control of the day-to-day operations in finance.
5 And you were required under the Bank Secrecy Act to implement
6 effective anti-money laundering programs and safeguards; and
7 yet you failed to do so.

8 As a result, it earned significant benefit from the lack
9 of controls and the desire or pursuit of controls, when you
10 knew you should have at the very beginning.

11 Next, the court needs to look at the sentence to reflect
12 the seriousness of what you have done. Again, the court goes
13 to your failure in your responsibilities to maintain a proper
14 anti-money laundering program, that created potential to have
15 a significant impact upon the community, because of money
16 laundering import, and facilitating other criminal activity.
17 I referenced this before. That includes drug trafficking,
18 terrorism, and corruption. And moving proceeds through the
19 dark net, which can impact issues, circumstances, and
20 opportunities beyond our imagination, or an imagination that
21 we even care to visit.

22 Next, the court looks at the need to promote respect for
23 the law and to provide just punishment. The court believes
24 that from everything I know about this case, that you
25 prioritized Binance's growth and profits, over compliance

1 with United States laws and regulations.

2 Specific reference I make to a September 2019 chat, that's
3 reflected in the documents that were submitted to the court.
4 I believe it's quoted if you -- "If we block U.S. users from
5 day one, Binance will not be as big as we are today."
6 Concluding, it's better to ask for forgiveness than
7 permission, is what you described as a gray area.

8 The court next needs to look at the need to afford
9 adequate deterrence to criminal conduct. Much ado has been
10 made this morning about how much the court should consider
11 specific deterrence, and general deterrence. And to be
12 honest with you, sir, I'm quite confident that the concern of
13 needing to protect the public from you completing further
14 crimes is minimal, if it's even in existence. I'm confident
15 of that, sir, based upon everything that I've read.

16 But in terms of the concept of general deterrence, that's
17 a whole different category that the court needs to address.
18 Specific and general deterrence. We'll focus on general
19 deterrence. So others in similar situations or magnitude,
20 clearly understand they must engage in U.S. regulated
21 compliance procedures, that they can't allow customers to
22 create accounts and trade in exchange, without providing
23 identifying information. That they have to understand that
24 they have to systematically maintain and regulate
25 transactions, to avoid any violation of any laws in the

1 United States.

2 So these are not just casual, general-deterrence
3 considerations; these are very specific. It has to send a
4 message. And I know this has been opposed and objected to by
5 your lawyers. But it has to send a message, that they have
6 to recognize that if they wish to do business in the United
7 States, they must comply with all United States' regulations.
8 And if not, there's consequences.

9 Sir, the court also needs to look at the need to consider
10 whether or not the court needs to provide you with education,
11 training or treatment. None of those are factors for the
12 court to consider. You're well educated, you're incredibly
13 bright, and there's obviously no issue regarding any
14 treatment that's an issue before this court, and that's not a
15 factor for the court.

16 The court also looks at sentencing disparity, which is the
17 last factor. And, again, there's been much dispute about the
18 government's characterization. This is large. This is
19 unprecedented. We haven't faced this volume of activity in
20 the past. Yet your lawyers want the court to ignore the
21 impact of disparity, because of the consequences, the fact
22 that no other judge -- I believe you know that every judge
23 that's appointed, and every judge that serves, makes their
24 own independent determination. It's not a question of me
25 looking to what another judge has done. That doesn't mean

1 that I don't consider precedent, because I value precedent,
2 and I value it highly; because it's a fundamental concept of
3 our system of justice.

4 But at the same time, the court does not believe that
5 there's any other case or circumstance that's been before
6 another judge, certainly not before a federal judge, of the
7 magnitude, the impact, that your particular case, in fact,
8 present.

9 So with all these factors, the court will first confirm,
10 the court will not place you on any period of supervision.
11 The court recognized that fines could be imposed in this
12 matter. And the court will order a fine in the amount of
13 \$50 million. But that has been satisfied by the amount of
14 money that's already been paid between you and the Binance
15 company.

16 There's a special assessment, which is also due, which is
17 required by statute, in the amount of \$100, and that's also
18 due as well.

19 There's no additional restitution being sought by the
20 government. Is that correct, counsel?

21 MR. MOSLEY: That is correct, Your Honor.

22 THE COURT: All right.

23 So, sir, with all these factors, it comes down to the
24 bottom line of what is the court going to do?

25 Now, first of all, Mr. Zhao, I want you to know that I

1 took this book, and I went through every single letter, to
2 the point that the book started separating, because it's
3 important for me to know who you are as a person.

4 It's important for me to have a perspective, not the
5 government's perspective, not probation's perspective, but
6 it's the community of people that you know, that you've
7 interacted with. And they have given me a complete different
8 picture, in some ways. And other ways, it's almost a
9 consistent statement of an individual.

10 I can tell you it's rare that I see, and I don't think
11 I've ever seen this volume of letters, with glowing
12 statements, not just from family, but people that have known
13 you for long periods of time.

14 So I want you to know, sir, that that played a big role in
15 the ultimate sentence the court will impose.

16 The letters paint a picture of a man driven, as quoted in
17 one of your letters, was motivated by your passion to
18 technology and a drive to help people. That's out of one of
19 your letters, sir.

20 It's also clear from the letters, at one point you risked
21 your entire net worth, because of your belief and strength of
22 your conviction to make Binance a success. And that's a
23 statement to me of a person really committed and driven to
24 what they believe in, and what they want to have occur in
25 their life.

1 It's also clear from the letters that you provided that
2 you're a dedicated family man, and a giving person, as
3 demonstrated by your charitable deeds, for example, the
4 Binance charity, the first Blockbuster that enabled donation
5 programs, and helped 3.5 million people in 62 countries, and
6 a list of philanthropic deeds that continue to go on and on.

7 There's also the charity efforts in Uganda, where the
8 program that you designed and funded, was for children. And,
9 sir, I could go on and on with the other entities and
10 operations you helped fund, not of recent vintage, but for
11 some period of time.

12 The letters also paint a picture of a man who takes
13 responsibility for his mistakes. And as the letters said,
14 "He lives simply, and cares for his family and global
15 issues."

16 The background letters reference the fast rise of Binance,
17 under your direction, your hard work and vision is what made
18 it occur. An operation, with daily operations, and daily
19 transactions, and daily volume of \$500 million. That's
20 extraordinary, sir. And I think that, again, is
21 unprecedented, when I look at any other case that's before
22 this court.

23 Now, the court acknowledges your staggering
24 accomplishments and that you've demonstrated exceptional
25 acceptance of responsibility. Probation recognized that, and

1 the court recognizes that as well, because of what you've
2 done. And this certainly has been factored in the sentence
3 that I will impose.

4 The challenge before this court is how you managed and
5 directed Binance. As you were building your empire and
6 elected to engage in United States financial dealings, you
7 had a responsibility to comply with United States'
8 regulations. Not some, but all. You had the wherewithal,
9 the financial capabilities, and the people power, to make
10 sure that every single regulation in the United States, if
11 you were going to trade at this volume, had to be complied
12 with. And, sir, you failed at that opportunity.

13 The mere fact that you can place your name next to the
14 largest cryptocurrency operation on the planet, did not give
15 you the discretion to pick and choose which regulations that
16 you chose to follow. The United States' regulations are not
17 regulations that you can put a do-not-disturb button on your
18 website, or on your operational standards. It's something
19 that has to be complied with every single day, for every
20 single transaction and operation.

21 The report shows that billions worth of Bitcoins directly
22 transacted to the dark web markets, were often used as, at
23 least argued by the government, by criminals to money
24 launder, large volumes of opportunities to cause harm to
25 victims of terrorism, drugs, and more globally, impact the

1 financial systems across, not only the United States, but
2 across the planet.

3 I was deeply troubled in the materials submitted by the
4 parties, that include the reference to your statement
5 reflected on Page 1, in fact the opening line of the
6 government's brief to this court, is that it was better to
7 ask for forgiveness than for permission.

8 Now, I suspect that that was, and I'm confident that was
9 very prescient of where you are today, asking the court for
10 forgiveness as opposed to the permission that you failed to
11 seek so many years ago.

12 In one letter of support you were characterized as a
13 complex person who made bad decisions. And the court agrees
14 with that observation. If I may borrow another support
15 letter, it reads, you have the ability and will rehabilitate
16 because of this tough lesson. And I'm confident you will do
17 that, sir, if it's the person that everyone else knows that
18 you've represented to this court.

19 In concluding, the court doesn't believe that the
20 government's recommendation of an exceptional sentence is
21 appropriate or warranted, in light of the circumstance. The
22 government is asking this court to go and essentially double
23 the top end of the guideline range, and began its argument by
24 asking this court to ignore the sentencing guidelines. The
25 court hasn't heard that before. And the court is not going

1 to do that, in this particular case, to ignore the
2 guidelines. They're advisory, and I accept that. But at the
3 same time, in considering the sentencing guidelines, your
4 conduct does not warrant a 36-month sentence.

5 There needs to be an effort by this court to impose a
6 sentence that is appropriate and reasonable. And I hope you
7 understand, sir, that when I announce the exact amount of
8 sentence, you have to understand that despite wealth, power,
9 or status, no person, regardless of wealth, is immune from
10 prosecution, or above the laws of the United States.

11 Now, probation made a recommendation of a sentence of five
12 months. And the reason I'm not going to follow that
13 recommendation of five months is because of the description
14 that was provided in terms of the fact that you were not a
15 U.S. citizen, and the fact that whatever I impose, there will
16 be some delay in your release.

17 But I do believe that a reasonable and just sentence in
18 this case is one of four months. The court will impose that
19 at this point in time.

20 In this regard, I believe the sentence is reasonable and
21 sufficient, but no more than necessary to carry out the
22 objectives of sentencing.

23 Counsel, for the judgment, before you present the judgment
24 to the defendant, I wish to give him his rights on appeal.

25 Mr. Zhao, I want you to pay close attention. You can

1 confer with your lawyers in a minute. But under paragraph 15
2 of the plea agreement, you waived your right to an appeal.
3 And any rights you had on appeal, are exactly as stated in
4 that document. In addition to those rights, I wish to advise
5 you, you have the right to challenge your lawyers'
6 effectiveness, if you believe that's appropriate.

7 If you wish to appeal the sentence, it's very important
8 that you tell your lawyers that's exactly what you wish to
9 do. They can explain to you any issues that are appealable
10 and any issues that might survive.

11 If you wish to appeal the sentence and you cannot afford
12 the filing fee for the Court of Appeals, you can ask me to
13 waive that fee, and the court clerk will file the appropriate
14 documents, and file a notice of appeal upon your request.

15 With few exceptions, any notice of appeal must be filed
16 within 14 days of the entry of judgment.

17 And lastly, the waiver does not preclude you from bringing
18 an appropriate motion, pursuant to Title 28, United States
19 Code, Section 2241, to address the conditions of your
20 confinement, or the decisions of the Bureau of Prisons
21 regarding the execution of your sentence.

22 Now, probation raised a question earlier regarding a
23 report date or taking you into custody right now. I'm not
24 going to exercise that option, sir. You've demonstrated
25 remarkable compliance with the directives of this court, on

1 the previous release order.

2 I need to hear from your lawyers regarding your
3 recommended report date. Mr. Bartlett, I'm not sure who
4 wants to speak.

5 MR. BARTLETT: Your Honor, with all due respect, can
6 we get back to the court on a report date? We want to have a
7 chance to talk with probation about the alternatives that we
8 have, and perhaps a request for designation also.

9 Perhaps Ms. Whaley can explain what it is that we need to
10 go through at this point.

11 PROBATION OFFICER WHALEY: I'm not sure exactly what
12 Mr. Bartlett --

13 THE COURT: First of all, Mr. Bartlett, the sentence
14 I imposed traditionally would be served at the Detention
15 Center.

16 MR. BARTLETT: As we stand here today, Your Honor, I
17 think that's what we were going to do. But we do want to
18 talk about it internally, whether or not we want to make a
19 recommendation at Sea-Tac. And also we want to discuss
20 whether or not -- how long we think the Bureau of Prisons
21 will take for a designation.

22 Our understanding, if he were to report immediately,
23 although I know that's what he wants to do, so he can get
24 back to the UAE, that he might be designated -- that he might
25 be placed in the general population. But after a

1 designation, he would be placed into a work cadre, which
2 would be a much better situation. And that's really what
3 we're trying to determine.

4 THE COURT: Here's the concern, counsel. I want to
5 make sure your client knows, when he walks out of this
6 courtroom, exactly what his sentence is, and I've given him
7 that, and exactly when his report date is.

8 I don't want that to be something that you talk about with
9 probation. I'll give you an opportunity to meet and confer
10 right now. I'll even take a short recess. But when I come
11 out, I want to be able to articulate, from the bench, exactly
12 what his report date will be, and the designation
13 recommendation.

14 I want Mr. Zhao to understand, I can only recommend, I do
15 not control the Bureau of Prisons. It's up to them to
16 determine the proper designation. But I can tell you that,
17 with experience, typically sentences of this duration usually
18 are served at the Sea-Tac Center.

19 MR. BARTLETT: We've discussed both those
20 alternatives, your recommendation is not controlling, but it
21 is often followed. And we've else talked about the
22 advantages and probability of a Sea-Tac designation.

23 THE COURT: All right. How much time do you need,
24 counsel, to confer with probation?

25 MR. BARTLETT: Ten minutes.

1 THE COURT: We'll take a ten minute break. Call me
2 when you're ready.

3 (Recess.)

4 THE COURT: We're back on the record.

5 Counsel, let me hear from you. I'm not sure who wants to
6 speak for the defense.

7 MR. BARTLETT: First of all, we apologize in being
8 slow getting back in here. We have had a chance to talk with
9 probation, also.

10 Our request is that Mr. Zhao be designated, request to be
11 designated to FDC Sea-Tac. And that we ask the reporting
12 date be left to the discretion of the probation office. My
13 understanding is they're going to ask for an expedited
14 designation. And when they get that, they'll notify us and
15 we will report.

16 THE COURT: Is that correct?

17 PROBATION OFFICER WHALEY: Yes, Your Honor.

18 THE COURT: Any input from the government on that?

19 MR. MOSLEY: No, Your Honor.

20 THE COURT: Mr. Zhao, you've heard your lawyer make a
21 representation regarding your reporting. We don't have an
22 exact date. But do I have your solemn oath and promise that
23 you will appear as directed by the United States Probation
24 Department.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: That will be acceptable to the court.
2 And that recommendation should be included.

3 MR. LERMAN: Your Honor, I've prepared the draft
4 judgment and will hand it to the defense for review.

5 THE COURT: All right. Thank you.

6 I want to emphasize, again, there should be no photographs
7 taken during the course of this proceeding. And I don't even
8 want to see a phone up. So if you have a phone, it needs to
9 go inside your purse, or in your pocket.

10 Probation has obviously inspected, correct?

11 PROBATION OFFICER WHALEY: We have not seen it yet.

12 THE COURT: I take it there are no counts to be
13 dismissed, correct?

14 MR. MOSLEY: No, Your Honor.

15 THE COURT: I have reviewed the judgment. It does
16 reflect the court's oral ruling, and I've signed it.

17 Now, I want to address the question of departure from the
18 courtroom. I'm going to permit defense counsel, and the
19 defendant, and the defense team, to leave the courtroom at
20 this point in time.

21 I'll direct that everyone else that's currently in the
22 courtroom, remain in your seats, until the court directs
23 otherwise. And I'll remain on the bench.

24 MR. BURCK: One small matter, for the record. I
25 misspoke during my presentation about -- I called Binance.US

1 a subsidiary of Binance. It is not a subsidiary, it's
2 actually a separate company entirely. I just wanted to state
3 that for the record, Your Honor.

4 THE COURT: Okay. That's fine.

5 (Adjourned.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

/s/ Debbie Zurn

DEBBIE ZURN
COURT REPORTER